

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3363

IN THE MATTER OF:

Served June 26, 1989

Application of CUSTOM TOURS OF)
WASHINGTON, INC., for a Certificate)
of Public Convenience and Necessity)
-- Special Operations)

Case No. AP-89-05

By application filed January 19, 1989, as amended at the hearing, Custom Tours of Washington, Inc. (Custom Tours or applicant), seeks to transport passengers as follows:

IRREGULAR ROUTES:

PART A

SPECIAL OPERATIONS, transporting passengers in sightseeing tours:

- (1) From motels and motor inns located at points on that part of U.S. Highway 1 south of junction U.S. Highway 1 and Interstate Highway 395 at or near Arlington, Va., and north of junction U.S. Highway 1 and Interstate Highway 95 at or near Woodbridge, Va., to points in the District of Columbia, and the City of Alexandria and Counties of Arlington and Fairfax, Va., and return.
- (2) From Holiday Inn, junction Interstate Highway 395 and Glebe Road, Arlington County, Va.; and Virginia Motel, 700 North Washington Street, Alexandria, Va.; to points in the District of Columbia and the City of Alexandria and Counties of Arlington and Fairfax, Va.; and return.

PART B

SPECIAL OPERATIONS, transporting passengers, restricted to lectured, round-trip sightseeing tours, between Mount Vernon and Arlington National Cemetery, Va., and points in that part of the District of Columbia south of a line beginning at the junction of Constitution Avenue, N.W., and Rock Creek Parkway, N.W., thence along Constitution Avenue, N.W., to 17th Street, N.W., thence along 17th Street, N.W., to Pennsylvania Avenue, N.W., thence along Pennsylvania Avenue, N.W., to 10th Street, N.W., thence along 10th Street, N.W., to F Street, N.W., thence along F Street, N.W., to 9th

Street, N.W., thence along 9th Street, N.W., to Pennsylvania Avenue, N.W., thence along Pennsylvania Avenue, N.W., to Constitution Avenue, N.W., thence along Constitution Avenue to its junction with 2nd Street, N.E.

RESTRICTED in PARTS A and B above against transportation solely within the Commonwealth of Virginia, and further restricted to transportation in vehicles with a manufacturer's designed seating capacity of between 16 and 29 passengers (driver not included). */

A public hearing was held on Tuesday, April 4, 1989, pursuant to Order No. 3292, served February 21, 1989, and incorporated herein by reference. The application was protested by Gold Line, Inc., (Gold Line or protestant). Applicant presented an operational witness, a financial witness, and one public support witness. Protestant appeared at the hearing, cross-examined applicant's witnesses, and presented evidence on its own behalf.

SUMMARY OF EVIDENCE

Applicant currently holds WMATC Certificate No. 43 which authorizes the above-described transportation. However, Certificate No. 43 is restricted to transportation in vehicles with a manufacturer's seating capacity of 15 passengers or less, including the driver. Mr. Keith Jones, president of Custom Tours, testified on behalf of the company. Mr. Jones has held jobs in the transportation industry for 25 years; he formerly worked as a driver, tour guide, and dispatcher for a major coach carrier.

Applicant plans to offer five tours. Tour I ("All Day Deluxe Tour") would include interior visits to the White House, Capitol, Supreme Court, Smithsonian, Lincoln Memorial, Vietnam Memorial and Arlington National Cemetery, with an observation tour of other historical sites. The proposed fare is \$30 for adults and \$15 for children. Tour II ("Alternate All-Day Tour") would provide interior visits to Ford's Theater, the Petersen House and F.B.I. Headquarters. The tour also includes a 3-hour stop on the Mall. The charge would be \$27.50 for adults and \$13.75 for children. Tour III ("Two Day Grand Tour") is a combination of Tours I and II; the price would be \$50 for adults and \$25 for children. Tour IV ("Washington After Dark") includes a visit to the Iwo Jima Memorial and an observation tour of the Lincoln Memorial, White House, Washington Monument, and Capitol; \$15 for adults and \$7.50 for children would be charged. Tour V

*/ At hearing, applicant amended the application from transportation of passengers in vehicles having a manufacturer's seating capacity of between 16 and 48 passengers to transportation of passengers in vehicles designed to seat between 16 and 29 passengers (not including the driver).

("Concert Evening at Washington Monument") provides transportation for patrons to a concert presented by the U.S. Air Force at the Washington Monument with an observation tour of points of interest after the concert. The charge would be \$15 for adults and \$7.50 for children. Tour availability varies seasonally. Applicant would operate between 7 a.m. and 5 p.m., seven days a week. The proposed operations would be conducted in one 21-passenger vehicle and one 29-passenger vehicle. The vehicles would undergo a daily maintenance routine, and tune-up or repairs would be performed by an experienced mechanic. Custom Tours plans to lease the vehicles. Applicant's employees are all experienced drivers having 20 years experience in the transportation industry. If the authority sought is granted, applicant would discontinue service in 15-passenger vehicles.

Mr. Jones was questioned at length regarding the scope of Custom Tours' current operations and the geographical restrictions placed on Certificate No. 43. The witness admitted that, due to a misunderstanding of the transportation authorized by PART A (1) of its Certificate No. 43, Custom Tours had been operating outside the scope of its authority. Mr. Jones testified that Custom Tours would immediately cease unauthorized activities. Applicant is familiar with the Compact, Commission rules and regulations, and the United States Department of Transportation Safety Regulations and intends to comply with them.

Mr. Harold O. Bradshaw, applicant's accountant, testified regarding Custom Tours' finances. Applicant's balance sheet as of December 31, 1988, shows current assets in cash of \$12,000 with fixed assets, after allowance for depreciation, of \$17,940. No liabilities are listed. Applicant shows \$29,940 in equity. At hearing, however, Mr. Bradshaw testified that, because of the disposal of one of applicant's two vans, its fixed assets are now approximately \$16,000 and applicant's equity in the corporation is decreased accordingly. Custom Tours projects \$150,000 in revenue and \$92,500 in expenses for its first year of proposed operations.

Ms. Kathy Johnson testified on applicant's behalf. Ms. Johnson is the owner/operator of the gift shop in the Howard Johnson Motel located on U.S. Route 1, Richmond Highway, Alexandria, VA. The gift shop currently sells sightseeing tickets for applicant's services. The witness testified that in the month of March 1989, ticket receipts for Custom Tours totalled \$550 with the price of the tours ranging from \$27.50 to \$30. Ms. Johnson added, however, that the total for March was not representative of the "peak season" which begins in June. Until May, the hotel is primarily booked with tour groups having their own transportation. Ms. Johnson has turned customers away due to lack of available space on applicant's tours. However, she has not been forced to turn sightseeing patrons away this year. The witness believes that there is a need for service in a larger vehicle. She has been satisfied with the quality of service currently performed by Custom Tours and would be willing to sell applicant's proposed services if the application is granted.

Mr. Charles L. Cummings, vice-president and general manager of Gold Line, Inc., testified in opposition to the application. Gold Line holds WMATC Certificate No. 14 which authorizes, inter alia, the transportation of passengers in charter and special operations between points in the Metropolitan District. Gold Line offers per capita sightseeing tours which are comparable to the ones offered by the applicant. In addition to providing coach services, protestant offers transportation in two 22-passenger vehicles and one 27-passenger vehicle. Gold Line protested the application because Custom Tours originally intended to perform operations in coach-sized vehicles; protestant also intended to uncover alleged unauthorized activities on the part of applicant. Gold Line presented a witness to support its claim of unauthorized activities. Applicant's restrictive amendment limiting vehicle seating capacity to 29 passengers or less, its admission that Custom Tours mistakenly performed operations along unauthorized routes, and its promise to cease such activities immediately, eased the concerns of Gold Line. As a result protestant filed a statement on May 2, 1989, indicating that "... it is Gold Line's understanding that Custom Tours has discontinued service beyond the scope of its operating authority. In these circumstances the interests of Gold Line in this case have been satisfied."

DISCUSSION AND CONCLUSIONS

In determining whether to grant a certificate of public convenience and necessity, we look to the standards enunciated at Title II, Article XII, Section 4(b) of the Compact which provides:

... the Commission shall issue a certificate . . . , if it finds, after hearing held upon reasonable notice, that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity (Emphasis supplied.)

Based on a review of the entire record in this case, we find that applicant has failed to sustain the burden of proof imposed by the Compact.

In determining whether an applicant has met its burden of proving public convenience and necessity, the Commission relies on the test enunciated in Pan-American Bus Lines Operations, (1 MCC 190, 203 [1936]). The Pan-American test consists of three parts:

- (1) whether the new operation or service will serve a useful public purpose responsive to a public demand or need;
- (2) whether this purpose can and will be served as well by existing lines or carriers; and

- (3) whether it can be served by applicant with the new operations or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

Applicant produced only one public support witness. The witness represented a hotel located on U.S. Route 1. She testified that the establishment is often occupied by tour groups that provide their own means of transportation. The witness revealed that during the month of March receipts for sightseeing tickets totalled \$550. On the basis that the tickets sold ranged in price from \$27.50 to \$30 each, it is apparent that a total of 18 to 20 persons took applicant's tours during the month. It is noted that, although the month of March is not viewed as part of the "peak" tourist season, the witness did not provide testimony of increased demand during the peak season sufficient to justify a claim of public need for the proposed service of applicant. Furthermore, inasmuch as applicant will now cease serving unauthorized origins, it will have additional capacity in the vans it now operates.

Based on the evidence of record in this case, we find that Custom Tours, has not met the requirement proving that the proposed operation would serve a useful purpose responsive to a public demand or need as set forth in the first part of the Pan-American test.

Having found that the public convenience and necessity do not require the authority sought in the instant application service we do not reach the issue of its fitness to perform the proposed services.

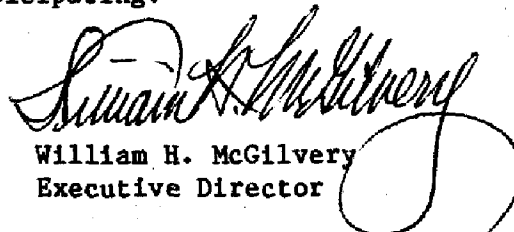
The president of Custom Tours testified that operations performed outside the scope of its Certificate No. 43 would cease immediately. Custom Tours will be directed to cease and desist from engaging in operations which fall outside the scope of Certificate No. 43. Failure to do so will result in the commencement of revocation proceedings.

THEREFORE, IT IS ORDERED:

1. That the application of Custom Tours of Washington, Inc., for a certificate of public convenience and necessity is hereby denied in its entirety without prejudice.

2. That Custom Tours of Washington, Inc., is hereby directed to cease and desist from transporting passengers for hire in operations that fall outside the scope of WMATC Certificate No. 43.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY AND SHANNON;
SCHIFTER, Vice-Chairman, not participating:


William H. McGilvery
Executive Director